# COURT OF APPEALS DECISION DATED AND FILED

May 14, 2013

A. John Voelker Acting Clerk of Court of Appeals

#### **NOTICE**

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Appeal No. 2012AP1672-CR STATE OF WISCONSIN

Cir. Ct. No. 2009CF2748

## IN COURT OF APPEALS DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONELL HOWLETT,

**DEFENDANT-APPELLANT.** 

APPEAL from a judgment and an order of the circuit court for Milwaukee County: KEVIN E. MARTENS and RICHARD J. SANKOVITZ, Judges.<sup>1</sup> *Affirmed*.

Before Curley, P.J., Kessler and Brennan, JJ.

<sup>&</sup>lt;sup>1</sup> The Honorable Kevin E. Martens presided over trial and entered the judgment of conviction. The Honorable Richard J. Sankovitz entered the order denying Howlett's motion for postconviction relief.

¶1 CURLEY, P.J. Ronell Howlett appeals the judgment convicting him of three counts of first-degree sexual assault of a child under the age of thirteen, contrary to WIS. STAT. § 948.02(1)(e) (2009-10).<sup>2</sup> He also appeals the order denying his postconviction motion. Howlett argues that he is entitled to a new trial because trial counsel was ineffective and because the real controversy was not fully tried. We reject Howlett's arguments and affirm the conviction and order.

#### **BACKGROUND**

¶2 Howlett worked as a bus driver for Life Skills Academy, a private grade school in Milwaukee. He transported students from their homes to school in the morning, and from school to their homes or daycare after school.

¶3 In early June 2009, one of the students Howlett was responsible for driving, nine-year-old C.A., accused him of sexually assaulting her. According to the criminal complaint, C.A. told police that Howlett had assaulted her on three successive days in late May 2009. C.A. claimed that Howlett offered her a cell phone and chips in exchange for sexual contact, and told her not to tell anybody what he did to her. C.A. reported the incidents after a speaker at a church service she was attending spoke to the congregation about how he was inappropriately touched as a child, and asked the congregation to come forward and discuss any similar experiences. When C.A. told an assistant pastor about what happened to her, the pastor informed C.A.'s parents, who called the police. Howlett was arrested and the case went before a jury.

 $<sup>^{2}\,</sup>$  All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

- $\P 4$ At trial, C.A. described the three incidents—which occurred after Howlett had dropped off all of the other students and just he and C.A. were on the bus together—in detail. C.A. testified that on the day of the first assault, she asked Howlett if she could have a cell phone that was in a nearby cup holder, and if he would stop and get her some chips. She said that Howlett told her that in exchange for these items she would have to do something "nasty." Howlett then asked her if she would suck on his penis. C.A. testified that Howlett pulled down his pants and had her touch his penis with her hand, and then had her move her hand up and down. She said Howlett's penis went into her mouth for a short time. Howlett did not ejaculate. C.A. also testified that Howlett gave her a blue cell phone. C.A. testified that on the day of the second assault, Howlett again pulled down his pants and had her touch his penis with her hand. She said he had her move her hand up and down, and that he said to do it harder until his "nut" came She said that Howlett explained to her that his "nut" would be like spit. C.A. testified that Howlett ejaculated on the day of the second assault, and testified in detail as to the consistency and color of Howlett's semen. She further testified that after Howlett ejaculated, he cleaned himself off with a napkin and cleaned her hand with a napkin. C.A. testified that on the day of the third assault, Howlett told her he would give her some more chips if she touched his penis again. She said that Howlett again had her touch his penis and move her hand up and down. She said that he had a "nut" again.
- ¶5 M.M., one of C.A.'s fellow students at Life Skills Academy, also testified. M.M. testified that although he was normally the last person to be dropped off from the bus, there were "like three days" in a row towards the end of May when he was dropped off before C.A.

- ¶6 Howlett testified in his own defense. He denied having sexual contact with C.A. and denied giving her the cell phone. He explained that although he did keep several cell phones that he confiscated from students in a cup holder next to him on the bus, he did not keep these phones or give them out, but instead gave them to the school at the end of the school day. Howlett's attorney also elicited testimony that police found no evidence of semen and no evidence that the bus Howlett drove for Life Skills Academy had been recently cleaned.
- ¶7 The jury found Howlett guilty of the three counts of sexual assault and he was sentenced.
- ¶8 Howlett then filed two motions for postconviction relief. The first motion alleged that Howlett was entitled to a new trial because trial counsel was ineffective. The second—a motion to amend the first—also alleged that he was entitled to a new trial in the interest of justice. The trial court subsequently conducted a *Machner*<sup>3</sup> hearing, and thereafter issued a decision denying Howlett's motions.
- ¶9 Howlett now appeals. Further facts will be developed as necessary below.

#### **ANALYSIS**

¶10 On appeal, Howlett argues that he is entitled to a new trial because trial counsel was ineffective; he also argues that he is entitled to a new trial because the real controversy was not fully tried. We discuss each argument in turn.

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<sup>&</sup>lt;sup>3</sup> See State v. Machner, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

- I. Howlett is not entitled to a new trial because trial counsel was not ineffective.
- ¶11 Howlett's first argument on appeal is that trial counsel's performance was ineffective. To succeed on this claim, Howlett must show (1) that trial counsel's performance was deficient and (2) that this deficient performance was prejudicial. *See State v. Mayo*, 2007 WI 78, ¶33, 301 Wis. 2d 642, 734 N.W.2d 115; *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish deficient performance, Howlett must show facts from which a court could conclude that trial counsel's representation was below objective standards of reasonableness. *See State v. Wesley*, 2009 WI App 118, ¶23, 321 Wis. 2d 151, 772 N.W.2d 232. To demonstrate prejudice, he "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *See Strickland*, 466 U.S. at 694 (1984). If Howlett fails to make a sufficient showing on one *Strickland* prong, we need not address the other. *See id.* at 697.
- ¶12 The issues of performance and prejudice present mixed questions of fact and law. *See State v. Sanchez*, 201 Wis. 2d 219, 236, 548 N.W.2d 69 (1996). Findings of historical fact will not be upset unless they are clearly erroneous, *see id.*, but the questions of whether counsel's performance was deficient or prejudicial are legal issues we review independently, *see id.* at 236-37.
- ¶13 Howlett presents seven ways in which trial counsel was allegedly ineffective. We discuss each of Howlett's arguments below.

# a. <u>Trial counsel was not ineffective for not introducing C.A.'s school</u> attendance records.

 $\P14$ Howlett first argues that trial counsel was ineffective for not introducing C.A.'s school attendance records for the second half of May 2009. At trial, C.A. testified that Howlett assaulted her on three consecutive days "sometime in the 20's of May." When asked whether the assaults occurred on three days "right in a row," she answered "yes." (Some capitalization omitted.) Similarly, when asked whether the assaults occurred on "three straight days," she answered "yes." The problem with this testimony, argues Howlett, is that C.A. was not at school three calendar days in a row "in the 20's of May." Her attendance records show that she was in attendance the following days: Wednesday, May 20, 2009; Thursday, May 21, 2009; Tuesday, May 26, 2009; and Wednesday, May 27, 2009. School was not in session on either Friday, May 22, 2009, or Monday, May 25, 2009. Thus, while C.A. was noted to have been in school on three consecutive school days, she was not in school on three consecutive calendar days. According to Howlett, the fact that C.A. was not in school on three consecutive calendar days was critical evidence that would have changed the outcome of trial because it proved not only that "C.A.'s story did not comport with known facts," but also cast doubt on fellow-student M.M.'s testimony.

<sup>&</sup>lt;sup>4</sup> The attendance record for May contains a handwritten notation that there was no school on Friday, May 22, 2009; however, three students were nevertheless marked as "present" that day. The State argues that the fact that students were marked present for that day suggests that perhaps school was in session, and perhaps C.A. was in fact assaulted three calendar days in a row "in the 20's of May": Wednesday, May 20, Thursday, May 21 and Friday, May 22, 2009. While the record for this particular day does in fact show that a few students were at school despite the fact that school was apparently not in session, C.A. was not among the three marked present. In any event, the discrepancy has no bearing on our analysis.

¶15 We disagree. At trial, C.A. was not asked whether she meant calendar days or school days. As the trial court explained in its decision denying C.A.'s postconviction motion, the admission of the attendance records would not have made a difference in the trial's outcome because the records do not rule out the possibility that C.A. was assaulted on three consecutive *school* days:

I do not believe that [trial counsel's] lapse caused [Howlett] any prejudice. Mr. Howlett demands a degree of precision-recall that no reasonable jury would expect of a third-grader. As evidence of this, consider that the jury was willing to accept [C.A.'s] testimony even though she could not pin down the particular dates on which she was assaulted. The best she could remember was that the assaults took place "in the 20's" of May, 2009.... This lack of precision in her recall did not cause the jury to reject her testimony, and neither would the lack of a precise recall about whether the assaults took place on consecutive days.

If there was something about the believability of [C.A.'s] accusation against Mr. Howlett that depended upon whether the assaults took place on consecutive days – say, that she said she was assaulted three days in a row but Mr. Howlett was a substitute driver who worked only one day every two weeks – then such a discrepancy might have made a difference. But such is not the case here.

Furthermore, even if there was something about the consecutiveness of the assaults that lent credence to the accusation in the eyes of the jury, a reasonable jury might not have construed [C.A.'s] claim as literally as Mr. Howlett does.... Although the attendance records rule out the possibility that [C.A.] could have been assaulted on three consecutive calendar days, they do not rule out the possibility that she was assaulted on three consecutive [school] days.

¶16 Therefore, even assuming, *arguendo*, that trial counsel was deficient in this regard, trial counsel was not ineffective because the alleged error did not prejudice Howlett. *See Strickland*, 466 U.S. at 694, 697.

- b. <u>Trial counsel was not ineffective for not impeaching C.A. regarding the</u> duration of the assaults.
- ¶17 Howlett next argues that trial counsel was ineffective for failing to impeach C.A. with testimony from the preliminary hearing regarding the duration of the assaults. At trial, C.A. testified that on the day of the first assault, she touched Howlett's penis for "a minute" before putting her mouth on his "private part" for "a second." At the preliminary hearing, on the other hand, C.A. testified that on the day of the first assault, she touched Howlett's penis for "about two seconds," and on the second and third days, she touched it for "a little bit" longer. Howlett claims that, given that C.A.'s preliminary hearing testimony was "substantially different" from her trial testimony, trial counsel missed an "obvious opportunity" to impeach C.A. Although he acknowledges children "are not always precise in their estimates of time, and the jury would likely give some leeway due to the fact that C.A. was nine years old at the time of the alleged assaults," Howlett claims that trial counsel was nevertheless ineffective for failing to impeach C.A. on the time discrepancy because that discrepancy "contributes toward reasonable doubt."
- ¶18 We disagree. As the trial court recognized, a minute difference in a nine-year-old's estimation of the time that she was being sexually assaulted is likely not something that would cause a jury to doubt the child's credibility:

No reasonable jury would hold a third-grader to such a precise standard. In common parlance, especially among kids, "a second," "two seconds," and "a minute" are not mutually exclusive; some might consider them pretty much the same. Consider how kids use these words. Can we really count on the kid who says he will be downstairs "in a minute" to arrive at the table for dinner to arrive sooner than the kid who says she'll be there in "two seconds," or even "just a second"? Even if Mr. Howlett's trial lawyer brought to the jury's attention the discrepancies in [C.A.'s]

testimony, I don't believe they would have shaken the jury's confidence in [her] testimony.

- ¶19 Therefore, we conclude that because Howlett has not shown prejudice concerning trial counsel's failure to impeach C.A., trial counsel was not ineffective in this regard. *See Strickland*, 466 U.S. at 694, 697.
  - c. <u>Trial counsel was not ineffective for not presenting evidence that C.A.</u> was exposed to sexually explicit terms via her peers prior to alleging she had been assaulted.
- ¶20 Howlett also argues that trial counsel was ineffective for not presenting evidence that C.A. was exposed to sexually explicit terms via her peers prior to alleging she had been assaulted. C.A. testified at trial that Howlett used sexually explicit terms, like "nut" and "suck" and "dick" during the assaults. In addition, C.A.'s mother testified that "there was some things that [C.A.] stated that only a grown man would say, she wouldn't know those words." The police officer who interviewed C.A. testified that C.A. "referred to [']nut['] based upon what [Howlett] had said to her." Howlett argues that trial counsel was ineffective for failing to put on testimony from C.A.'s fellow students that would have shown that she was exposed to phrases such as "suck my dick" and "nut" from her classmates, and not from him. According to Howlett, trial counsel's performance in this regard was both deficient and prejudicial because "[m]ost jurors would have thought that a nine-year-old girl would not have known these terms unless they had been uttered by Howlett himself."
- ¶21 We disagree. Once again, we agree with the trial court's analysis of this issue. We think that, regardless of where C.A. heard the explicit language, this was not a factor that substantially affected the reliability of the verdict, *see Strickland*, 466 U.S. at 694, because it was C.A.'s detailed description of the assaults that persuaded the jury:

[N]o matter where [C.A.] learned the meaning of terms like "suck my dick" and "nut," it appears to me that she was using them during Mr. Howlett's trial only because she needed the words to describe what he did to her, not to corroborate her accusations against him with words she says she would not have known unless she learned them from him. Of much greater import to Mr. Howlett's conviction was that a third-grader could describe in such detail a kind of behavior that is so outside the experience of a third-grader, regardless of terms a third-grader might hear on the playground or elsewhere that describe such conduct. That a third-grader might have heard elsewhere words which refer to such conduct does not explain how she could understand and describe for the jury the conduct itself.

- ¶22 Therefore, we conclude that because Howlett has not shown prejudice concerning trial counsel's failure to present the source of C.A.'s knowledge of sexually explicit terms, trial counsel was not ineffective in this regard. *See Strickland*, 466 U.S. at 694, 697.
  - d. <u>Trial counsel was not ineffective for not objecting when the prosecutor asked Officer Young leading questions, nor was trial counsel ineffective for failing to object to any hearsay contained in Officer Young's testimony.</u>
- ¶23 Howlett's next argument is that trial counsel was ineffective for not objecting when the prosecutor asked Officer Jody Young, who interviewed C.A. about her allegations that Howlett sexually assaulted her, leading questions, and for not objecting to any of Officer Young's testimony that may have contained inadmissible hearsay.
- ¶24 Regarding the leading questions, Howlett directs us to the following exchanges from Officer Young's direct examination:
  - Q: Do you recall if [C.A.] told you ... that [Howlett] would give her chips and a cell phone if she did something, quote, nasty for him?

A: Yes, she did.

. . . .

Q: Do you recall [C.A.] telling you that the defendant, while she was touching his – she describes it as a private part with her hand, telling her to do it harder?

A: Yes.

...

Q: Now, do you recall [C.A.], when you were talking to her about day two, do you recall her telling you, that Ronell promised to get her a High School Musical headphone – set of headphones?

A: Yeah....

Trial counsel did not object to any of these questions.

- ¶25 Regarding the alleged hearsay, Howlett directs us to the aforementioned testimony, and additionally directs us to the following exchanges:
- Officer Young testified that C.A.'s mother reported that a member of C.A.'s church spoke to C.A. who disclosed that "something happened to her by a bus driver from her school."
- Officer Young testified that C.A. told her mother that she was assaulted by a bus driver from school.
- Officer Young testified that C.A. said that Howlett gave her a cell phone.
- Officer Young testified that C.A. said that Howlett sexually assaulted her three times.
- Officer Young testified that C.A. said that Howlett would give C.A. chips, a cell phone, and headphones if she did something "nasty" for him.

- Officer Young testified that C.A. said that Howlett showed her how to touch his "private part."
- ¶26 According to Howlett, trial counsel's decision not to object to these questions and testimony was both deficient and prejudicial because the exchanges between the prosecutor and Officer Young "created an impression that … Young was endorsing C.A.'s allegations and added a measure of artificial authority to C.A.'s allegations," and "reinforced" the validity of C.A.'s testimony, giving "the impression to the jury that it must be true since it was validated through the words of an officer."
- Leaving the question of deficiency aside, see We disagree. Strickland, 466 U.S. at 697, we conclude that the admission of Officer Young's testimony in the case before us does not undermine our confidence in the trial's outcome, see id. at 694. First, Howlett does not sufficiently explain what about the aforementioned testimony "created an impression that ... Young was endorsing C.A.'s allegations." Howlett points to no testimony showing that Young stated she believed C.A. and that the jury should also believe C.A.; rather Young's testimony—including how C.A. came to report the assaults to her and what C.A. told her—was elicited in the context of explaining her role as an investigating officer. Second, even if the jury got to hear the gist of C.A.'s allegations a second time via Young's testimony, it is highly unlikely that not hearing Young's testimony would have changed the trial's outcome because C.A. was the primary witness, and C.A. gave an extremely detailed account of Howlett's assaulting her. As the trial court stated:

Officer Young's summary of the statements of [C.A.] and her mother was too brief in comparison to the testimony that was being summarized to add much reinforcement. Perhaps the most telling indication that Officer Young's

testimony was more or less superfluous is that the prosecutor made only one brief mention of it in closing argument ... and did not suggest to the jury in any way that the testimony of either witness was more believable because it was somehow validated or reinforced by Officer Young.

- ¶28 Therefore, we conclude that because Howlett has not shown prejudice concerning trial counsel's failure to object to alleged hearsay and/or leading questions, trial counsel was not ineffective in this regard. *See Strickland*, 466 U.S. at 694, 697.
  - e. <u>Trial counsel was not ineffective for failing to introduce testimony regarding C.A.</u>'s reputation for untruthfulness.
- ¶29 Howlett next argues that trial counsel was ineffective for failing to introduce testimony regarding C.A.'s reputation for untruthfulness. Specifically, Howlett argues that trial counsel should have introduced the testimony of one of C.A.'s teachers, who would have testified that C.A. had a reputation for being untruthful.
- ¶30 We do not think the omission of this testimony prejudiced Howlett because there is no reasonable probability that it would have changed the trial's outcome. *See id.* The jury would have weighed general testimony about C.A.'s untruthfulness against her very detailed account of the assaults, which, as the trial court noted in its decision denying Howlett's postconviction motions, contained "details which are beyond the grasp of children whether they have been untruthful in the past or not ... details that [C.A.] couldn't have made up whether she was inclined to fabricate a story or not." We also conclude that the proffered testimony regarding C.A.'s untruthfulness is particularly weak in light of the fact that the teacher who would have given it worked for Howlett's parents at one point. Even if, as Howlett argues, the teacher was a "professional," the State

would have been able to convincingly argue at trial that a professional who at one point worked for the defendant's parents had a very strong motive to give testimony favoring the defendant, and the jury would have had to weigh that motive against the allegation Howlett claimed it supports—that C.A. is a liar and was lying about the assaults. We do not think, given the minimal strength of this testimony, that it would have affected the trial's outcome.

- ¶31 Consequently, because Howlett has not shown that the omission of this testimony prejudiced him at trial, we conclude that trial counsel was not ineffective. *See Strickland*, 466 U.S. at 694, 697.
  - f. <u>Trial counsel was not ineffective for failing to impeach C.A. regarding prior theft of a cell phone.</u>
- ¶32 Additionally, Howlett argues that trial counsel was ineffective for failing to impeach C.A. about an incident that occurred about six months before the assaults in which C.A. allegedly stole a cell phone from her teacher. Howlett argues that the evidence that C.A. stole a cell phone from her teacher was admissible either as habit evidence under WIS. STAT. § 904.06(1); other acts evidence under WIS. STAT. § 904.04(2)(a); or as a specific instance of prior conduct under WIS. STAT. § 906.08(2).
- ¶33 We disagree with Howlett because the evidence that C.A. stole a cell phone from her teacher would not have been admissible. We agree with the trial court's analysis regarding this issue:

To prove that [C.A.] had a habit of stealing cell phones, it was incumbent upon Mr. Howlett to show "an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine." WIS. STAT. § 904.06(2). The key trait of admissible habit evidence is something that suggests a "regular response to a repeated situation." *Steinberg v.* 

*Arcilla*, 194 Wis. 2d 759, 767, [535 N.W.2d 444] (Ct. App. 1995), *quoting* 1 *McCormick on Evidence* § 195 at 825.

Mr. Howlett offers no opinion of any reliable observer that [C.A.] regularly stole cell phones or regularly stole anything. Nor is there anything about the classroom theft that suggests any kind of habit or routine or regular response to any kind of repeated situation. Indeed, to the extent that the theft of the cell phone from [C.A.]'s teacher shows any kind of habit, as the State points out, it shows that when confronted with her wrongdoing, [C.A.] tells the It does not show or even suggest that when confronted she concocts a story accusing the person from whom she has stolen of some other wrongdoing. The two alleged thefts [the theft from her teacher and Howlett's allegation that she actually stole the cell phone she said he gave her in exchange for sexual contact] do not bear enough resemblance to constitute a pattern that suggests any sort of routine.

As an alternative, Mr. Howlett argues that the evidence was admissible as evidence of other acts under WIS. STAT. § 904.04(2). He says the evidence is admissible for one of the purposes listed in the statute ("motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident") or for the more generalized purposes of establishing "context, credibility, and ... a more complete background," as approved in *State v. Marinez*, 2011 WI 12, ¶27, 331 Wis. 2d 568[, 797 N.W.2d 399].

Whether or not one could articulate such a purpose in Mr. Howlett's case ... one must remain mindful of the overriding prohibition stated in WIS. STAT. § 904.0[4](2): other acts evidence is not admissible "to prove the character of a person in order to show that the person acted in conformity therewith...." As the *Marinez* court put it, other acts evidence is not admissible for any purposes "that draw the prohibited propensity inference regarding a defendant's character." *Id.*, 2011 WI 12, ¶29. But that is precisely why Mr. Howlett seeks the admission of this evidence; his intentions are transparent....

Finally, Mr. Howlett argues that the evidence is admissible under WIS. STAT. § 906.08(2), which allows the admission of evidence of specific conduct for the purposes of impeachment. This shot also misses the mark. [C.A.] offered no testimony about theft which could be impeached by evidence of her stealing.

### (Bolding added.)

¶34 While Howlett argues that the trial court's determination that the evidence of C.A.'s prior cell phone theft is inadmissible because there is no "bright-line rule specifying any minimum number of 'specific instances'" under WIS. STAT. § 904.06, *see Steinberg*, 194 Wis. 2d at 769, we note that Howlett himself acknowledges that the admissibility of habit evidence "depends on the judge's evaluation of the particular facts of the case," *see id.* at 768 (citation omitted). In this case, the facts do not lend themselves to showing that C.A. had a habit of stealing cell phones because, as the trial court explained, C.A. confessed to stealing the phone upon confrontation in the earlier instance—and, additionally, did not attempt to pin the theft on someone else.

¶35 Similarly, while Howlett argues that the trial court got it wrong in determining that the evidence of C.A.'s prior cell phone theft was offered for a prohibited purpose under WIS. STAT. § 904.04(2) because the evidence would show "that there is another way that C.A. got the cell phone other than being given it by Howlett," we agree with the State that Howlett is actually arguing that because C.A. stole a cell phone in 2008, she also stole the phone that Howlett gave her in 2009. This is not an acceptable purpose for which evidence can be offered under § 904.04(2). *See State v. Sullivan*, 216 Wis. 2d 768, 772, 576 N.W.2d 30 (1998).

- ¶36 Likewise, we also disagree with Howlett's contention that the evidence was admissible under WIS. STAT. § 906.08(2). The statute states that specific instances of conduct may be inquired about only if the witness "testifies to his or her character for truthfulness or untruthfulness." *See id.* Howlett does not present any testimony by C.A. in which she discusses her character for truthfulness; consequently, we cannot conclude that the evidence would have been admissible under § 906.08(2).
- ¶37 In sum, because the evidence of C.A.'s prior cell phone theft was inadmissible, trial counsel was not ineffective for failing to attempt to introduce it. *See State v. Wheat*, 2002 WI App 153, ¶14, 256 Wis. 2d 270, 647 N.W.2d 441 ("Failure to raise an issue of law is not deficient performance if the legal issue is later determined to be without merit.").
  - g. <u>The cumulative impact of the alleged errors does not constitute ineffective assistance of counsel.</u>
- ¶38 Howlett's final argument regarding his ineffective assistance of counsel claim is that the cumulative effect of the alleged errors discussed above prejudiced him at trial. Howlett's argument is little more than a brief summation of his earlier, unsuccessful arguments regarding trial counsel's effectiveness. As our supreme court has explained, adding together numerous failed arguments does not create one successful one—"[z]ero plus zero equals zero." *See*, *e.g.*, *Mentek v. State*, 71 Wis. 2d 799, 809, 238 N.W.2d 752 (1976). Evidence of Howlett's guilt was strong in this case. C.A. gave an extremely detailed account of the assaults—an account that would have been otherwise outside the experience of a nine-year-old. Therefore, as we discussed more fully above, trial counsel's performance was not ineffective because of the cumulative impact of any of the

issues Howlett brings before us, and we conclude that Howlett is not entitled to a new trial.

II. The trial court properly denied Howlett's postconviction motion for a new trial because the full controversy was fully tried.

¶39 Howlett also argues that he is entitled to a new trial based on the interest of justice. *See* WIS. STAT. § 752.35. Howlett's argument regarding the "catch all" exception is merely a very brief outline of his earlier, unsuccessful arguments regarding trial counsel's effectiveness. It is inadequately briefed and we will not consider it. *See State v. McMorris*, 2007 WI App 231, ¶30, 306 Wis. 2d 79, 742 N.W.2d 322 ("we may choose not to consider arguments unsupported by references to legal authority, arguments that do not reflect any legal reasoning, and arguments that lack proper citations to the record").

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.